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OFFICE OF PETITIONS

In re Application of  
Mitchell, et al.  
Application No. 09/756,096  
Filed: January 8, 2001  
Docket No. A31304-B-A-B

ON PETITION

This is a decision on the petition filed on December 27, 2001, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a complete reply to the Notice to File Missing Parts of Nonprovisional Application, mailed April 24, 2001, which set a shortened statutory period for reply of two (2) months. On July 11, 2001, petitioner obtained a one month extension of time and filed an executed declaration, together with the surcharge for its late filing. However, because petitioner did not submit substitute drawings nor submit a Sequence Listing, the reply was not complete. Accordingly, the above-identified application became abandoned on June 25, 2001. A Notice of Incomplete Reply was mailed on July 23, 2001. The instant petition precedes the mailing of a Notice of Abandonment.

Petitioner has met the requirements to revive the above-identified application, pursuant to 37 CFR 1.137(b). Petitioner submitted the required reply in the form of substitute drawings and a sequence listing in both paper and computer readable form, paid the petition fee, and made the proper statement of unintentional delay. 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3). The statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the \$920 extension of time fee submitted with the petition on December 27, 2001 was subsequent to the maximum period obtainable for reply (November 24, 2001), this fee has been refunded to petitioner's Deposit Account number 02-4377.

The application file is being forwarded to the Office of Petitions for consideration of petitioner's "Petition For Question Not Specifically Provided For", filed September 24, 2001.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0272.

Cliff Congo  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy